IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4799 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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J.B.MEHTA - Petitioner(s)
Versus
AMRELI DISTRICT PANCHAYAT & 3 - Respondent(s)

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Appearance :
MR MK PATEL for KS ACHARYA for Petitioner(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1 - 2.
MS HANSA PUNANI, AGP for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

Date : 26/06/2006
ORAL JUDGMENT

This petition under Article 226 of the Constitution challenges the order terminating the petitioner's services pursuant to the failure of the petitioner to pass the requisite departmental

examination within the prescribed chances.

2. There is no dispute about the fact that the petitioner failed to pass the requisite departmental examination within three chances. There is also no dispute about the fact that the employee is entitled to avail of three chances and upon failure to pass the examination within three chances, the employer may give an additional chance. It appears that the petitioner was accordingly given fourth chance to appear at the examination which was to be conducted on 29th and 30th January, 1993. The permission to appear at the fourth chance was granted as per the order dated 20.8.1992. However, the petitioner was arrested and detained in judicial custody during the period between 23.12.1992 to 18.2.1993 in connection with offences punishable under the provisions of Sections 201, 419, 467, 468, 472, 474, 477A, 51 and 420 IPC. The petitioner was, therefore, declared to have failed to pass the departmental examination even at the additional chance and the order dated 4.10.1993 (Annexure “D”) came to be passed by the Deputy District Development Officer (Establishment), Amreli District Panchayat terminating the petitioner's services on the ground that the petitioner failed to pass the departmental examination. The petitioner challenged the said order by filing Special Civil Application No. 11465 of 1993 which came to be disposed of by order dated 13.1.1995 of this Court permitting the petitioner to make a representation and directing the authorities

to decide the petitioner's representation sympathetically for giving him one additional chance for appearing at the pre-service examination. The petitioner accordingly made such a representation which came to be rejected by the State Government in the Panchayat Department by communication dated 21.4.1995 (Annexure “F”). The petitioner thereupon filed the present petition.

3. At the time of admission of the petition also, this Court passed interim order dated 21.6.1996 directing that the concerned authority of the respondents should reconsider the request of the petitioner for being given fourth chance of appearing at the examination and pass a reasoned order which may be placed on the record of this petition.

4. In compliance with the aforesaid interim direction of the Court, the State Government in the Panchayat Department reconsidered the matter and by order dated 25.7.1996 took the view that in view of the petitioner's conduct which also indicated that the petitioner had threatened the Taluka Development Officer and had caused damage to the panchayat's property and was involved in the aforesaid criminal office, the petitioner did not deserve to be granted fourth chance to appear at the pre-service examination. A copy of the said order was forwarded by the Deputy District Development Officer (Establishment), Amreli District Panchayat alongwith his letter dated 21.8.1996. Inspite of the aforesaid

developments, the petitioner did not choose to challenge the said order dated 25.7.1996. It is only when the petition is listed for final hearing and when the matter was called out for hearing on 22.6.2006 that the learned advocate for the petitioner appeared and submitted that the petitioner may be permitted to amend the petition for challenging the said order dated 25.7.1996.

5. Apart from the fact that the petitioner himself slept over the matter and chose not to challenge the said order dated 25.7.1996 by moving an application for amendment of the petition, the fact remains, as stated by Mr MK Patel for the petitioner, that the criminal case in question which resulted into the petitioner's detention preventing him from appearing at the examination in January 1993 is still pending. Since it was the petitioner's conduct resulting into the petitioner's detention for the offence in question, the trial of which is still pending, it would be premature at this stage to hold that the authorities were not justified in not giving the petitioner an additional chance for appearing at the examination.

6. In view of the above, the Court is not inclined to grant the oral request being made by the learned advocate for the petitioner for adjournment to move an application for amendment of the petition. However, in case the petitioner is acquitted in the criminal case, it will be open to the petitioner to

make a representation for additional chance to appear at the examination, but the Court may not be treated to have expressed any opinion either way at this stage. It will be open to the petitioner to move the concerned Criminal Court for expeditious completion of the trial.

7. Subject to the aforesaid observations, the petition is dismissed.

Rule is discharged.

[M.S. SHAH, J.]

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